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UNCLAS SECTION 01 OF 03 BANGKOK 001345

SIPDIS

SENSITIVE

COMMERCE FOR ITA: KBOYD, JBENDER AND JKELLY

STATE PLEASE PASS TO USTR FOR BWEISEL;EBRYAN;DKATZ

DEPT FOR EB AND EAP/BCLTV

E.O. 12958: N/A

TAGS: [ETRD](#) [ECON](#) [TH](#)

SUBJECT: Thai Customs Notifies Ports: Zero Percent Duty on Diebold's ATM Machines

REF: (A) 04 SECSTATE 162348 (B) 04 BANGKOK 5885 C) 04 BANGKOK

6447

-- SENSITIVE BUT UNCLASSIFIED PLEASE PROTECT ACCORDINGLY --

1. (SBU) Summary: Thailand's Customs Department informed Econoff on February 18 that its November 1 ruling, that ATMs that dispense cash as a core function are entitled to a zero percent import tariff under the Information Technology Agreement (ITA), had been distributed to Thailand's ports in January. The ruling benefits Diebold, which can expect a refund within 2-3 months, but is a blow to IBM (which had d
appealed the earlier Customs ruling) as its cash deposit machines will be subject to a fifteen percent tariff. This case highlights Thailand's often protracted and opaque legal mechanisms, and the need for effective dispute resolution procedures in our prospective Free Trade Agreement. End Summary.

2. (U) On February 18, Embassy representatives met with the Customs Department's Mr. Watana U-Thasoonthorn, Director, Customs Procedures and Valuation Directorate. Econoff thanked Mr. Watana for his work in resolving the Diebold automatic teller machine (ATM) case and asked for an update. (NOTE: In October 2003, Customs had assessed a fifteen percent duty on Diebold's imported ATMs rather than the zero percent duty they had previously enjoyed as products under the WTO's Information Technology Agreement (ITA), deciding that the machines were not ATMs if they did not carry out all four functions of an ATM as outlined in the ITA's Harmonized System Explanatory Notes. Diebold was then required to post a 15 percent deposit or bond to allow importation, preceding formally contesting the finding. Diebold sought advocacy through the USG, while IBM, whose ATM imports were also affected, appealed the Customs ruling through Royal Thai Government (RTG) channels. After learning of the case in July and delivering points in Ref A to Customs in August, Customs Deputy Director General Manat made embuffs a firm commitment that Customs would reverse its earlier decision and "fix this problem." (Ref B). In September DDG Manat provided embuffs with the Ministry of Finance's (MOF) Fiscal Policy Office opinion that ATMs without all four functions are entitled to a tariff exemption under the ITA (Ref C), saying it paved the way for a swift and favorable ruling by the Customs Committee on IBM's appeal. However, those expectations were revealed to be premature, as wrangling continued within Customs with the influential official who had made the original determination. Customs then solicited opinions from Customs officials of other countries, including the US, on their practices regarding ATMs.)

3. (SBU) Director Watana noted that on November 1, 2004 the Customs Committee ruled that a machine need not carry out all four functions to be considered an ATM under the ITA, but that it must dispense money as a core function to benefit from tariff exemption under the ITA. (NOTE: This ruling mirrors rulings of U.S. Customs and tariff treatment of ATMs imported into the U.S.) The ruling benefits Diebold (which Watana said should receive a refund of the duties paid within 2-3 months) but not IBM, which imports deposit only machines that are now subject to a 15 percent tariff. Watana further explained that the Customs Committee ruling had been circulated in January to both the MOF's Revenue Department and Customs officials at the ports, removing the appellant's name (IBM) from those copies in view of privacy issues. At Econoff's request, Watana provided a Thai language copy of the November 1 ruling circulated to the ports. Post's informal translation of the ruling, and the cover letters to the Revenue Department and Port Customs Bureaus, appears at the end of this message.

4. (SBU) Comment: This outcome is great news for Diebold and its American workforce. In reviewing the long and winding road that we have traveled to reach this resolution, we draw several lessons: first, for U.S. firms encountering customs

problems, there is great efficacy in getting the Embassy involved early in the process. Second, a thorough understanding of U.S. tariff treatment is highly desirable, since Thai authorities pay close attention to -- and not infrequently emulate -- U.S. practices. Finally, the lack of transparent procedures reminds us anew of the need for effective dispute resolution mechanisms in our prospective FTA. End Comment.

17. (SBU) [Begin Text.] Memorandum

From: Standard Procedure and Customs Valuation
Directorate (SPCVD)
Ref: Gor Kor 0519 (Kor)/0056
Date: Jan 14, 2005
Subject: Notification of the Appeal Ruling

To: Deputy Director-General Responsible for Tariff
Collection

1) Background:

In accordance with the Valuation Appeal Committee's ruling during the 4th/2004 meeting dated November 1, 2004 regarding the Automatic Depositor Machine (ADM) and Automatic Teller Machine Cash Dispenser (CD) products, the appeal ruling no. Gor Or 5/2004/Por 4 (3.2) has been issued.

2) Facts

Currently, importations of said products through various Customs ports still face many difficulties in Customs assessment procedures. In order to facilitate this process, Customs deems it necessary to notify Customs officials of the appeal ruling on ADM and CD products for appropriate action.

3) SPCVD's Opinion

The SPCVD has agreed that the appeal ruling should be circulated to the followings Customs agencies dealing with the importations:

Bangkok Customs Bureau,
Bangkok International Airport Customs Bureau,
reau,
Bangkok Port Customs Bureau,
and Laem Chabang Port Customs Bureau.

For your approval,

Mr. Watana U-Thasoontorn
(signed)
Senior Expert
SPCVD

Copy

From: SPCVD
Ref: Gor Kor 0519 (Gor) 0057-0060
Date: January 14, 2005
Subject: Notification of the Appeal Ruling
To: -Bangkok Customs Bureau
-Bangkok International Airport Customs Bureau
-Bangkok Port Customs Bureau
-Laem Chabang Port Customs Bureau

Please be notified of the appeal ruling of ADM and CD products, as per the attached ruling. The Deputy Director-General responsible for tariff collection approved on January 18, 2005 to circulate this appeal ruling to Customs officials for action.

Please be informed accordingly.

Mr. Watana U-Thasoontorn
(signed)
Senior Expert
SPCVD

The Appeal Ruling

1) The Company [name excised] had appealed to the Committee on Valuation Appeal as per the attached documents about 16 imported shipments.

Products: Automatic Depositor Machine (ADM) and
s: Automatic Depositor Machine (ADM) and
Automatic Teller Machine Cash Dispenser (CD)

Meeting date: 4th /2004, dated November 1, 2004

Issue: Shall the products be qualified for duty-free treatment under the WTO-ITA?

Fact

The Company [name excised] as the Appellant has declared its 16 shipments of imported Cash Deposit Machines and Cash Dispenser Machines to be classified in sub-heading 8472.90 for tariff exemption, as stated in the Finance Ministerial Notification for tariff exemption and reduction (Tor Sor 3) dated December 28, 2001.

Customs officials had decided that ATMs with tariff exemption under the Ministerial Notification (Tor Sor 3) dated December 28, 2001 must have all 4 functions, namely: deposit, withdrawal, transfer, and checking balances; a machine missing any one of these functions would not be entitled to tariff exemption.

2)The Appeal Committee rules as follows,

ATMs classified under sub-heading 8472.90 of Finance Ministerial Notification dated December 28, 2004 regarding ing tariff exemption and reduction (Tor Sor 3), which is in compliance with the Information Technology Agreement (ITA), explains that the ATM machine must have Cash Dispensing as the main function, and such machine may or may not include the other functions.

Rationale

Originally, the imported ATMs with 4 functions, namely deposit, withdrawal, transfer, and checking balances, which was classified in sub-heading 8472.90 and listed under the Information Technology Agreement (ITA) products with tariff exemption under the Finance Ministerial Notification No. Sor Gor 21/1999 (Tor Sor 1) dated December 29, 1999, enforced on January 1, 2000, and the Finance Ministerial Notification (Tor Sor 3) dated December 28, 2001, enforced on January 1, 2002, has been classified in:

Sub-heading 8472.90 only the Automatic Teller Machines (ATMs) are treated as tariff exempt.

Later on, the similar imported machines classified in sub-heading 8472.90 did not have all 4 functions, as the separation of the withdrawal and deposit functions provides faster service to users. Therefore, the tariff assessments were questioned as to whether a machine without all 4 functions should be classified as an ATM under the Finance Ministerial Notification dated December 28, 2001 regarding tariff exemption and reduction (Tor Sor 3), or not.

In reviewing the explanatory notes of the Harmonization System 2002 or EN/HS 2002, which defines Automatic teller machines as "machines with which customers deposit, draw and transfer money and see the balances of their accounts without direct contact with bank personnel," the problem has emerged as to whether the ATMs must have all 4 functions or not.

In the Appeal Committee's review, considering information gathered from such sources as its own technical research, the explanation of ITA members namely: USA, Canada, Japan, Malaysia and Indonesia, and also from the explanation of the WCO (World Customs Organization), has found that ATMs do not need to have all 4 functions. But, the machine must have the withdrawal function (cash dispensing) as a core function, while the other functions, such as deposit, transfer and checking balances need not be included in that machine. Therefore, the Appeal Committee has determined accordingly.

3)The Appeal Committee and the Appellant will each receive a copy of the appeal ruling. The Appellant has the right to appeal the ruling to the court within 30 days from the date of receiving the appeal ruling.

[End Text.]

Boyce